Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 86-1175

SUPREME COURT OF THE UNITED STATES

October Term, 1986

EDDIE THOMPSON, JR. - - - - Appellant

versus

ROBERT F. STEPHENS, Et Al. - - Appellees

On Appeal From the Kentucky Supreme Court

MOTION OF APPELLEES TO DISMISS

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INTRODUCTION

The purpose of this motion is to oppose Appellant's appeal since jurisdiction is lacking and no substantial question is presented.

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v.

ROBERT F. STEPHENS, Et Al. - - *Appellees*

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STATEMENT OF FACTS

On September 9, 1986, the Appellant filed a "Petition for Writ of Mandamus And/Or Prohibition" at the Kentucky Supreme Court against the chief justice of that court, all the Kenton County, Kentucky circuit judges, a Kenton County district judge, the Kenton County attorney and an attorney from Covington, Kentucky. In his petition, which is very difficult to comprehend, Appellant appeared to be complaining that all of the circuit judges from Kenton County recused themselves from his father's guardianship case, and a special judge was appointed by the chief regional judge, rather than the chief justice of the Kentucky Supreme Court. Appellant also discussed the case from which the judges recused themselves. Appellee Godsey, the district judge, was the trial judge. Appellees Elfers and Hammons were attorneys in the case, although neither apparently represented Appellant.

The case apparently involved the appointment of a guardian for Appellant's father. Appellant appealed the decision of the trial court to the circuit court whereupon all the circuit judges recused themselves. Pursuant to Section V of the Regional Administration Program Charter adopted by the Kentucky Supreme Court on October 18, 1983, the chief regional judge (Appellee Lape) of the Sixth Region, which includes Kenton County, designated a special judge from another circuit in the region. This appointment apparently precipitated Appellant's petition. In the petition, Appellant prays primarily for the following relief: (1) that the Kentucky Supreme Court declare the Regional Administration Program unconstitutional as violative of, *inter alia*, the Fourteenth Amendment to the United States Constitution and itself appoint a special judge, and (2) that Judge Godsey, Mr. Elfers and Mr. Hammons be required to explain their handling of the case.

On October 16, 1986, the Kentucky Supreme Court dismissed Appellant's petition stating that the rules of procedure did not authorize the type of action filed by Appellant. Appellant filed a notice of appeal to this Court, citing 28 USC § 1257(1) and (2) as authority therefor.

LACK OF JURISDICTION

A. No Statutory Authority

The statute which Appellant purports gives this Court jurisdiction is 28 USC § 1257(2). Appellant

also argues that if an appeal was not the proper procedure and jurisdiction does not lie pursuant to subsection 2, then the Court should treat his jurisdictional statement as a petition for a writ of certiorari and that jurisdiction would lie pursuant to 28 USC § 1257(3).

Subsection 2 of § 1257 requires that an Appellant challenge the validity of a state statute as being repugnant to the United States Constitution, treaties or laws and that the decision below must be in favor of the statute's validity. Appellant herein is not challenging the validity of a state statute. Rather, he is questioning the validity of the administrative program adopted by the Kentucky Supreme Court, claiming that it is repugnant to various provisions of the United States Constitution.

First, the Kentucky Supreme Court did not address any federal questions in its order. Rather, it held that Appellant had not followed the proper procedure for bringing a mandamus case. The Kentucky Rules of Civil Procedure require that a petition for a writ of mandamus or prohibition against a circuit judge be brought in the Court of Appeals of Kentucky and not the Supreme Court. Civil Rule 76.36. Consequently, there is no decision of the Kentucky Supreme Court upholding the validity of a state statute against a challenge of repugnancy to the United States Constitution, as required by 28 USC § 1257(2).

Secondly, no state statute is involved. The adminstrative procedures governing a state court system has not been deemed a state statute for purposes of

§ 1257. See, *Lathrop* v. *Donohue,* 367 U. S. 820, 6 L. Ed. 2d 1191, 81 S. Ct. 1826 (1961) where it was held that to qualify as a state statute under § 1257 (2) the act must be legislative in nature. The administration of the judiciary is not of a legislative nature.

B. No Federal Question

There is no substantial federal question involved. Appellant's first question substantially alleges that the Regional Administration Program violates the United States Constitution, Article I, Section 1 (legislative power vested in Congress), Article III, Section 1 (judicial power vested in Supreme Court), Article III, Section 2 (Supreme Court to have appellate jurisdiction), Article VI (Constitution and federal statutes supreme law of the land), First Amendment and Fourteenth Amendment. Appellant's jurisdictional statement fails, however, to specify how the administration of the Kentucky courts violates any of the aforementioned provisions.

Appellant's second question appears to assert that the Fourteenth Amendment one-man, one-vote decisions apply to the administration of a state court system. However, the prevailing view is that the one-man, one-vote decisions do not apply to the judiciary. See, *Stokes* v. *Fortson,* 234 F. Supp. 575 (N.D. Ga. 1964); *New York State Assn. of Trial Lawyers* v. *Rockefeller,* 267 F. Supp. 148 (S.D. N.Y. 1967); *Kail* v. *Rockefeller,* 275 F. Supp. 937 (E.D. N.Y. 1967); *Sullivan* v. *Alabama State Bar,* 295 F. Supp. 1216 (M.D. Ala. 1969).

Finally, Appellant's third question, regarding whether mandamus is the appropriate remedy under state law to require the county attorney to perform a state ministerial duty, and the fourth question, whether the Kentucky Supreme Court is obligated to investigate allegations of unethical conduct by attorneys, involve no federal question whatsoever. They are strictly matters of state law, and were not raised or presented by Appellant in the Kentucky Supreme Court.

CONCLUSION

Appellant has not demonstrated that the statutes grant jurisdiction to this Court, either pursuant to 28 U.S.C. § 1257 (2) or (3). Appellees respectfully move the Court to dismiss this appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing Motion of Appellees to Dismiss has been mailed first class, postage prepaid to Eddie Thompson, Jr., P.O. Box 1221, Covington, Kentucky 41012 this 2nd day of February, 1987.

NATHAN GOLDMAN
Counsel for Appellees